

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHNNY LOUIE CASTILLO,

Plaintiff,

v.

FRITO-LAY, Inc, AND DOES 1-10,

Defendants.

Case No. C05-5209RJB

ORDER GRANTING
DEFENDANT'S MOTION TO
COMPEL AND SHOW CAUSE
ORDER

This matter comes before the court on the Defendant's Motion to Compel (Dkt. 14). The court has considered the pleadings filed in support of the motion and the file herein.

I. BACKGROUND

On March 18, 2005, plaintiff Johnny Castillo filed a complaint against Frito-Lay alleging employment discrimination in violation of his state and federal rights. Dkt. 1. On September 19, 2005, defense counsel sent its First Set of Interrogatories and Requests for Production to plaintiff's counsel. Dkt. 15 at 3. Having received no response, on October 26, 2005, defense counsel faxed a letter to plaintiff's counsel confirming the date of the plaintiff's deposition and requesting discovery responses. Dkt. 15 at 11-12. Counsel for the defense received no response and again faxed a letter requesting discovery responses and agreeing to proceed with the plaintiff's deposition only if plaintiff's counsel stipulated to defense counsel continuing the deposition, if necessary, after receiving discovery responses. Dkt. 15 at 13-14. Plaintiff's counsel

1 did not provide a response, and defense counsel faxed a settlement offer alerting the plaintiff that
2 a motion to compel would be filed if the case could not be settled. Dkt. 15 at 15-17. On
3 December 21, 2005, defense counsel faxed a final letter requesting discovery responses and
4 alerting the plaintiff that a motion to compel would be forthcoming. Dkt. 15 at 18-19.

5 On December 23, 2005, counsel for the plaintiff moved to withdraw. Dkt. 13. The court
6 granted the motion to withdraw and re-noted the pending motion to compel for February 17,
7 2006, to afford the plaintiff an opportunity to secure new counsel or respond to the motion on his
8 own behalf. Dkt. 18.

9 As of December 27, 2005, the defendant had received no responses or objections to its
10 discovery requests. Dkt. 15 at 2. The plaintiff has not responded to this motion.

11 **II. DISCUSSION**

12 **A. MOTION TO COMPEL**

13 Federal Rule of Civil Procedure 26 provides that “[p]arties may obtain discovery regarding
14 any matter, not privileged, that is relevant to the claim or defense of any party.” Fed. R. Civ. P. 26
15 (b)(1). The party’s answers to such discovery requests are due within 30 days of service of the
16 requests. Fed. R. Civ. P. 33(b)(3), 34(b). If a party fails to answer an interrogatory, the requesting
17 party may move to compel disclosure pursuant to Rule 37. Fed. R. Civ. P. 37(a)(2)(B).

18 The motion must certify that the parties have made a good faith effort to confer and
19 resolve the dispute themselves. Local Rule 37 (a)(2). Local Rule CR 37 defines a good faith effort
20 to confer as “a face-to-face meeting or a telephonic conference.” Local Rule CR 37(a)(2)(a). It is
21 not clear whether the parties have conferred in person or by telephone about the defendant’s
22 discovery request, but the evidence suggests that this and other matters were discussed
23 immediately after the plaintiff’s deposition. Dkt. 15 at 16.

24 The court may properly deem the plaintiff’s failure to respond to the motion an admission
25 that the motion has merit. Local Rule CR 7(b)(2). The plaintiff having provided no justification
26 for failing to respond to the defendant’s discovery requests, the motion should be granted.
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Federal Rule 37 governs sanctions and provides as follows:

Fed. R. Civ. P. 37(a)(4)(A). The plaintiff has provided no justification for the failure to comply with discovery requests. Nevertheless, the court will grant the plaintiff an opportunity to be heard as to why the court should not award the defendant \$292.50 as reasonable costs expended in filing the motion to compel.

Therefore, it is hereby

The Clerk of the Court is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Robert H Bryan

Robert J. Bryan
United States District Judge